

October 6, 2003

Administrative Letter 2003 - 8

**TO: All Companies Writing Any Form of Property and Casualty Insurance as Defined in §§ 38.2-110 through 38.2-134 of the Code of Virginia**

**RE: Business Transacted with Producer-Controlled Property and Casualty Insurer Act (§ 38.2-1341 et seq. of the Code of Virginia)**

**This Administrative Letter replaces Administrative Letter 1993-16, dated August 4, 1993, effective December 31, 2003.**

Article 7 (§ 38.2-1341 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia, the Business Transacted with Producer-Controlled Property and Casualty Insurer Act (the Act), imposes on all property and casualty carriers subject to licensure in Virginia certain contractual, audit, reporting and disclosure requirements relating to business placed with such insurers by a controlling producer. The purpose of this administrative letter is to assist the Bureau of Insurance (the Bureau) in ensuring compliance with the law by apprising insurers of the Act's applicability.

#### DEFINITIONS

"Control," including the terms "controlling," "controlled by" and "under common control with," means direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, through (i) the ownership of voting securities, (ii) by contract other than a commercial contract for goods or nonmanagement services, or (iii) otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing collectively ten percent or more of the voting securities of any other person.

"Controlled insurer" means a licensed insurer which is controlled, directly or indirectly, by a producer.

"Controlling producer" means a producer who, directly or indirectly, controls an insurer.

"Foreign insurer" means any foreign or alien insurer licensed to transact the business of insurance in this Commonwealth pursuant to § 38.2-1024 of the Code of Virginia.

"Licensed insurer," "insurer" or "property and casualty insurer" means any person, firm, association or corporation duly licensed under Title 38.2 of the Code of Virginia to write policies or agreements providing any form of insurance as defined in §§ 38.2-110 through 38.2-134 of the Code of Virginia. The following, inter alia, are not licensed insurers for the purposes of the Act:

1. All risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) and the Risk Retention Act, 15 U.S.C. § 3901 et seq. (1982 & Supp. 1986) and § 38.2-5101 of the Code of Virginia;
2. All residual market pools and joint underwriting authorities or associations; and
3. Any insurer licensed as a captive insurer under Chapter 11 (§ 38.2-1100 et seq.) of the Code of Virginia and any foreign insurer which is either (i) an association captive or (ii) a pure captive. An "association captive" is an insurer whose exclusive purpose is transacting the business of insurance and reinsurance only on risks, hazards and liabilities of the members of an insurance association comprised of any group of individuals, corporations, partnerships, associations, or governmental units or agencies whose members collectively own, control, or hold with power to vote, all of the outstanding voting securities of the association insurer. A "pure captive" is an insurer whose exclusive purpose is transacting the business of insurance and reinsurance only on risks, hazards, and liabilities of its parent, subsidiary companies of its parent, and associated and affiliated companies.

"Producer" means:

1. Any insurance agent subject to licensure pursuant to the provisions of Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2 of the Code of Virginia, or any managing general agent or reinsurance intermediary subject to licensure pursuant to the provisions of Article 9 (§ 38.2-1358 et seq.) and Article 8 (§ 38.2-1347 et seq.), respectively of Chapter 13 of Title 38.2 of the Code of Virginia; or
2. Any person subject to substantially similar licensure provisions of another state when, for any compensation, commission or other thing of value, such agent, intermediary or person acts on behalf of an insured other than the agent, intermediary or person, or aids in any manner, in selling, soliciting or negotiating the making of any contract of insurance in which the insured, owner and beneficiary are other than the agent, intermediary or person.

### APPLICABILITY

Property and casualty insurers domiciled in Virginia must comply with all provisions of the Act. Foreign and alien insurers not domiciled in an accredited state (as defined below) are subject to all the provisions of the Act unless they can demonstrate substantial compliance in a manner satisfactory to the Bureau. To demonstrate substantial compliance, foreign and alien insurers must be able to show compliance with the provisions of a substantially similar law enacted by an "accredited state" in which the insurer is licensed. An "accredited state" means a state in which the insurance department or regulatory agency responsible for administering the insurance laws of that state has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program.

Subsection 38.2-1342 B of the Act expressly requires foreign and alien insurers not domiciled in an accredited state to confirm substantial compliance at least once every five years as a condition to licensing. The Bureau intends to verify compliance of domestic insurers annually, and more often where appropriate, and to verify compliance of foreign and alien insurers not domiciled in an accredited state annually.

### MINIMUM STANDARDS FOR CONTRACTS, AUDIT COMMITTEE AND REPORTING

The minimum standards set forth in § 38.2-1342 of the Code of Virginia for producer-controlled insurers and controlling producers shall apply only if, in any calendar year, the aggregate amount of gross premium on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent of the admitted assets of the controlled insurer. These standards prescribe the existence of a written contract between the producer and the insurer, certain provisions in the contract, audit committee requirements for the insurer, and data and reporting requirements.

The requirements of § 38.2-1342 of the Code of Virginia, however, shall not apply if:

1. The controlling producer (i) places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate or subsidiary and receives no compensation based upon the amount of premiums written in connection with such insurance and (ii) accepts insurance placements only from nonaffiliated subproducers and not directly from insureds; and
2. The controlled insurer, except for insurance business written through a residual market facility such as the Virginia Automobile Insurance Plan, as set forth in § 38.2-2015 of the Code of Virginia, or the Virginia Property Insurance Association, as set forth in Chapter 27 (§ 38.2-2700 et seq.) of Title 38.2 of the Code of Virginia, accepts insurance business only from a controlling producer, a

producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

### DISCLOSURE

Section 38.2-1344 of the Code of Virginia requires that a controlling producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer. However, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in his records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has or will notify the insured.

### SECTION 38.2-1342 REPORT

Domestic insurers, and foreign and alien insurers not domiciled in an accredited state, shall confirm substantial compliance with the Act by submitting annually a completed *Section 38.2-1342 Report* (the Report). The Report is to be filed with the insurer's annual statement, which is due March 1.

Insurers domiciled in Virginia should direct questions regarding this administrative letter to:

Edward J. Buyalos, Jr.  
Supervisor, Domestic Financial Analysis Section  
SCC, Bureau of Insurance  
P.O. Box 1157  
Richmond, VA 23218  
(804) 371-9637

Insurers not domiciled in Virginia should direct questions to:

Gregory D. Walker  
Supervisor, Non-Domestic Financial Analysis Section  
SCC, Bureau of Insurance  
P.O. Box 1157  
Richmond, VA 23218  
(804) 371-9636

Sincerely,

Alfred W. Gross  
Commissioner of Insurance